

## REMARKS

### A. 35 U.S.C. § 103

#### 1. Ishii et al. and Ishizuka et al.

In the Office Action mailed on August 24, 2004, claims 1-12, 17-21, 24 and 25 were rejected under 35 U.S.C. §103 as being obvious in view of Ishii et al. and Ishizuka et al.

Applicants traverse this rejection for the same reasons given in their Amendment filed on July 8, 2004, the entire contents of which are incorporated herein by reference. In particular, neither Ishii et al. nor Ishizuka supply motivation to alter Ishii et al. so that the light reflected from Ishii et al.'s grating 21 is reflected back onto grating 3A and so the rejection is improper and should be withdrawn.

Despite the impropriety of the rejection, claims 1 and 17 have been amended to clarify that the first and second transmissions of the beams are via the same graduation of the measuring graduation structure. Since neither Ishii et al. nor Ishizuka disclose altering Ishii et al. so that multiple transmissions of the beams are performed by the same graduation, the rejection should be withdrawn and the claims allowed.

Please note that amendments made to claims 1 and 17 are being presented to clarify the claimed invention. Since it is not believed that the present amendments made to claims 1 and 17 alter the meaning and scope of the claims, the amendments are not being presented for reasons of patentability as defined in *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) (*en banc*), *overruled in part*, 535 U.S. 722 (2002).

**2. Ishii et al., Ishizuka et al. and Ito et al.**

Claims 13-16, 22 and 23 were rejected under 35 U.S.C. §103 as being obvious in view of Ishii et al., Ishizuka et al. and Ito et al. Applicants traverse this rejection. Applicants traverse this rejection for the same reasons given in their Amendment filed on July 8, 2004. In particular, neither Ishii et al. nor Ishizuka supply motivation to alter Ishii et al. so that the light reflected from Ishii et al.'s grating 21 is reflected back onto grating 3A and so the rejection is improper and should be withdrawn.

Despite the impropriety of the rejection, claim 13 has been amended to clarify that the first and second transmissions of the beams is via the same graduation of the measuring graduation structure. Since neither Ishii et al., Ishizuka nor Ito et al. disclose altering Ishii et al. so that multiple transmissions of the beams are performed by the same graduation, the rejection should be withdrawn and the claims allowed.

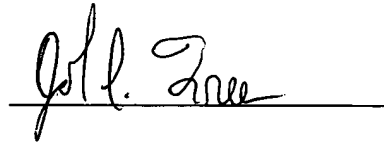
Please note that amendments made to claim 13 are being presented to clarify the claimed invention. Since it is not believed that the present amendments made to claim 13 alter the meaning and scope of the claims, the amendments are not being presented for reasons of patentability as defined in *Festo*.

**CONCLUSION**

In view of the arguments above, Applicants respectfully submit that all of the pending claims 1-25 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to

contact the undersigned attorneys at (312) 321-4200.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Freeman", is written over a horizontal line.

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